

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**Criminal Action No. 1:21cr6
(Judge Kleeh)**

EDWARD SMITH,

Defendant.

UNITED STATES' UNOPPOSED MOTION TO DISMISS INDICTMENT

Now comes the United States of America by William J. Powell, United States Attorney for the Northern District of West Virginia, and by Christopher L. Bauer, Assistant United States Attorney, who move the Court to dismiss with prejudice the Indictment returned by the Grand Jury on January 5, 2021, which charges the defendant, Edward Smith ("Smith"), with assault with a deadly weapon with intent to do bodily harm, in violation of 18 U.S.C. §§ 7(3) and 113(a)(3) (Dkt. No. 3).

Under the Federal Rules of Criminal Procedure, "[t]he government may, with leave of court, dismiss an indictment, information, or complaint. The government may not dismiss the prosecution during trial without the defendant's consent." Fed. R. Crim. P. 48(a). The United States Court of Appeals for the Fourth Circuit has explained that "[t]he trial court has little discretion in considering a government motion to dismiss made pursuant to Federal Rule of Criminal Procedure 48(a). It must grant the motion absent a finding of bad faith or disservice to the public interest." United States v. Smith, 55 F.3d 157, 159 (4th Cir. 1995) (quoting United States v. Perate, 719 F.2d 706, 710 (4th Cir. 1983)). "The disservice to the public interest must be

found, if at all, in the motive of the prosecutor. Examples of disservice to the public interest include the prosecutor's acceptance of a bribe, personal dislike of the victim, and dissatisfaction with the jury impaneled.” Id. (citations omitted).

Although he was originally indicted on January 5, 2021 (Dkt. No. 3), Smith has since pleaded guilty and been sentenced in Criminal Action No. 1:21cr11, charging him with assault with a deadly weapon with intent to do bodily harm, in violation of 18 U.S.C. §§ 7(3) and 113(a)(3) (Case No. 1:21cr11, Dkt. Nos. 1, 14-16). Pursuant to the binding plea agreement in that case, the government agreed not to pursue any other charges against Smith for his conduct on or about October 14, 2019 (Case No. 1:21cr11, Dkt. No. 15). Accordingly, there is good cause to dismiss the one-count Indictment in this case well before trial, which does not require Smith’s consent. Fed. R. Crim. P. 48(a). And critically, the government filed this motion in good faith and to serve the public interest. Finally, counsel for Smith does not oppose the government’s motion to dismiss.

For these reasons, the United States respectfully requests the Court to dismiss with prejudice the one-count Indictment returned by the Grand Jury on January 5, 2021 (Dkt. No. 3).

Respectfully submitted,

WILLIAM J. POWELL
United States Attorney

By: /s/ Christopher L. Bauer
Christopher L. Bauer
Assistant United States Attorney
320 W. Pike Street, Ste. 300
Clarksburg, WV 26301
(304) 623-7030
(304) 623-7031 (fax)

CERTIFICATE OF SERVICE

I, Christopher L. Bauer, Assistant United States Attorney for the Northern District of West Virginia, hereby certify that I electronically filed the foregoing **UNOPPOSED MOTION TO DISMISS INDICTMENT** with the Clerk of the Court using the CM/ECF system, which will send notice to counsel of record.

By: /s/ Christopher L. Bauer
Christopher L. Bauer
Assistant United States Attorney